

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

AMENDED IN SENATE JUNE 13, 2011

## **SENATE BILL**

**No. 807**

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**Introduced by Senator Correa**  
(Coauthor: Assembly Member Pan)

February 18, 2011

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An act to amend Sections 142, 148, 161, 162, 164.1, and 166 of, to add Section 141.5 to, and to repeal Section 167 of, the Military and Veterans Code, relating to the state militia.

### LEGISLATIVE COUNSEL'S DIGEST

SB 807, as amended, Correa. State militia.

Existing law provides that the Governor is the Commander in Chief of the Militia of the State. Existing law authorizes the Governor to order the active militia or any portion of the militia to perform military duty of every description, as described.

This bill would specify that the state active duty force consists of service members in active state service when ordered by the Governor. This bill would specify and revise conditions for state active duty for service members, as provided, and would authorize the Adjutant General to promulgate regulations in conformity with these provisions.

Existing law authorizes the Governor to make rules and regulations in conformity with the Military and Veterans Code that conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy.

This bill would instead require the Governor to direct the Adjutant General to make those rules and regulations.

Existing law specifies the membership of the office of the Adjutant General, including one officer who may be of the rank of brigadier general who is the Assistant Adjutant General. Existing law specifies that the Assistant Adjutant General is subordinate only to the Governor and the Adjutant General, and specifies 2 officers who may be of the rank of brigadier general, one of whom is the Deputy Adjutant General, Army Division and the other who is the Deputy Adjutant General, Air Division.

This bill would revise the ranks of officers in that office, by providing instead for one officer who may be of the rank of brigadier general who is the Deputy Adjutant General, and would require his or her duties to be assigned by the Adjutant General. This bill would, with regard to the Deputies Adjutant General, described above, provide for 2 officers who may be of the rank of brigadier general, one who is the Assistant Adjutant General, Army, and the other who is the Assistant Adjutant General, Air. This bill would also specify one officer who is the Chief of Staff and Director of the Joint Staff.

Existing law requires the Governor to appoint the Adjutant General. Existing law provides that the Adjutant General receives the same pay and allowances as received by a lieutenant general in the Army of the United States.

This bill would require the Governor to appoint the Adjutant General on state active duty in the grade of lieutenant general, and would make conforming changes to that provision relating to the pay and benefits of the Adjutant General.

Under existing law, in the event of the absence of the Adjutant General or of his inability to perform his duties, the officer designated by the Adjutant General or the senior officer in the Adjutant General's office performs those duties.

This bill would instead specify that those duties are to be performed by the Deputy Adjutant General or other officer designated by the Adjutant General.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3     (a) The full-time state militia provides California with a  
4 well-trained state military force that plays an integral role in the  
5 state's emergency management system. The Governor, as  
6 Commander in Chief, commands all state military forces through  
7 the Adjutant General. California law requires the Adjutant General  
8 to command the state military for civil support, the California  
9 Cadet Corps, Youth Programs, and Funeral Honors Programs. In  
10 addition, the Adjutant General commands state military forces in  
11 military civil support when the public's safety is jeopardized  
12 because of manmade or natural disasters. The full-time state  
13 military force provides California with military capabilities used  
14 to prepare for, respond to, and recover from the effects of  
15 emergencies regardless of cause, size, location, or complexity. The  
16 state militia is comprised of federally trained California National  
17 Guard and experienced State Military Reserve service members  
18 who are capable of immediately employing resources to save lives,  
19 prevent human suffering, or mitigate great property damage within  
20 the State of California.

21     (b) State active duty plays an important role in the national  
22 response framework. Under the 10th Amendment to the United  
23 States Constitution, national emergency response frameworks  
24 recognize that state forces have primary responsibility for providing  
25 military support to state and local authorities in emergencies.  
26 National Guard civil support refers to support provided to civil  
27 authorities for domestic emergencies and for designated law  
28 enforcement and other duties by the National Guard while in state  
29 active duty or while having the status described in Title 32 of the  
30 United States Code. State active duty military forces and National  
31 Guard forces conduct all missions in accordance with the needs  
32 of the state and within the guidelines of state laws. Because the  
33 National Guard continuously builds relationships with its civilian  
34 counterparts, when National Guard forces arrive to support an  
35 incident response, they usually integrate with first responders very  
36 quickly.

37     SEC. 2. Section 141.5 is added to the Military and Veterans  
38 Code, to read:

1 141.5. The state active duty force consists of service members  
2 in active state military service when ordered by the Governor in  
3 accordance with this code.

4 SEC. 3. Section 142 of the Military and Veterans Code is  
5 amended to read:

6 142. (a) The Governor may order the active militia or any  
7 portion of it to perform military duty of every description, including  
8 necessary administrative duties, and to participate in small arms  
9 gunnery competitions in this state or in any other state or territory  
10 or the District of Columbia, or in any fort, camp, or reservation of  
11 the United States. He or she may also authorize the performance  
12 of military duty or participation in small arms or gunnery  
13 competitions by any part of the active militia anywhere without  
14 the state or without the United States. Cruise duty ordered for the  
15 Naval Militia may be required to be performed on United States  
16 vessels.

17 (b) Service members selected for permanent positions shall be  
18 selected using a military competitive selection process. A service  
19 member ordered to state active duty in accordance with this section  
20 who remains on state active duty for six consecutive years shall  
21 be eligible for career state active duty *status and may remain on*  
22 *state active duty until the service member reaches 60 years of age*  
23 *or is separated for cause. At 60 years of age, a service member*  
24 *may remain on state active duty under temporary orders which*  
25 *may be renewed annually.*

26 (c) Orders for a service member with less than six years of state  
27 active duty service shall expire annually unless renewed or the  
28 service member is separated for cause.

29 (d) When a service member reaches 64 years of age, or when  
30 federal recognition of his or her grade or rank is withdrawn,  
31 whichever occurs later, the service member shall be retired from  
32 state active duty.

33 (e) A service member on state active duty with the Military  
34 Department pursuant to this section shall be a current member of  
35 the California National Guard, retired or otherwise honorably  
36 separated from federal active military or California National Guard  
37 service with current membership in the State Military Reserve, or  
38 be a current member of the State Military Reserve with a minimum  
39 of two years of service. Service members on state active duty who

1 retire federally from the California National Guard shall be  
2 automatically assessed into the State Military Reserve.

3 (f) A commissioned officer on state active duty assigned to a  
4 general officer position who, previous to that duty, held a state  
5 active duty position at a lower grade may revert to the grade last  
6 held upon vacation of the general officer position, if a position is  
7 available.

8 (g) Notwithstanding any other law, a service member who is  
9 on state active duty may be relieved from state active duty if the  
10 Adjutant General, acting in good faith and on behalf of the  
11 Governor, abolishes a position. The department shall make  
12 reasonable attempts to place the service member in an available  
13 position for which the service member is otherwise qualified.

14 (h) The Adjutant General, under the authority of the Governor  
15 as Commander in Chief, shall promulgate regulations in conformity  
16 with this section.

17 SEC. 4. Section 148 of the Military and Veterans Code is  
18 amended to read:

19 148. The Governor shall direct the Adjutant General to make  
20 rules and regulations in conformity with this code which shall  
21 conform as nearly as practicable to those governing the United  
22 States Army, United States Air Force, and United States Navy.  
23 The rules and regulations shall have the same force and effect as  
24 the provisions of this code.

25 A finding by the Governor that it is impracticable to conform  
26 rules and regulations to those governing the United States Army,  
27 United States Air Force, or United States Navy shall be conclusive  
28 and the rules and regulations shall have force and effect over  
29 inconsistent rules, regulations, directives, manuals, or practices  
30 governing any of the Armed Forces of the United States.

31 SEC. 5. Section 161 of the Military and Veterans Code is  
32 amended to read:

33 161. Within the Military Department, the office of the Adjutant  
34 General consists of one officer of the rank of lieutenant general  
35 who is the Adjutant General, one officer of the rank of brigadier  
36 general who is the Deputy Adjutant General, one officer who may  
37 be of the rank of brigadier general who is the Assistant Adjutant  
38 General, Army, one officer who may be of the rank of brigadier  
39 general who is the Assistant Adjutant General, Air, one officer  
40 who may be of the rank of brigadier general who is the Chief of

1 Staff and Director of the Joint Staff, and other officers as are  
2 prescribed by the laws or regulations of the United States. No  
3 person is eligible for appointment as the Deputy Adjutant General  
4 unless he or she has not less than a total of five years of  
5 commissioned service in the National Guard of the United States,  
6 of which at least three years shall be service as a field grade officer  
7 in the California National Guard within the preceding 10-year  
8 period prior to the date of appointment and of which at least three  
9 years shall have been in command of army or air troops at the  
10 battalion or equivalent or higher command level or three years as  
11 a staff officer at brigade or equivalent or higher staff level. The  
12 Deputy Adjutant General is subordinate only to the Governor and  
13 the Adjutant General and shall have his or her duties assigned by  
14 the Adjutant General.

15 SEC. 6. Section 162 of the Military and Veterans Code is  
16 amended to read:

17 162. The Governor, as Commander in Chief, shall appoint the  
18 Adjutant General, who shall be on state active duty, in the grade  
19 of lieutenant general, with the advice and consent of the Senate,  
20 and that person shall hold office at the pleasure of the Governor,  
21 or until his or her successor is appointed and has qualified. No  
22 person is eligible for appointment as Adjutant General unless he  
23 or she had not less than a total of 10 years of commissioned service  
24 in the National Guard of the United States, of which at least four  
25 years shall be service as a field grade officer in the California  
26 National Guard within the preceding 10-year period prior to the  
27 date of appointment and of which at least four years shall have  
28 been in command of army or air troops at the battalion or  
29 equivalent or higher command level or four years as a staff officer  
30 at brigade or equivalent or higher staff level.

31 SEC. 7. Section 164.1 of the Military and Veterans Code is  
32 amended to read:

33 164.1. The Adjutant General shall receive the same pay and  
34 benefits pursuant to Section 320 as a lieutenant general in the Army  
35 of the United States and shall be paid in the same manner and at  
36 the same time as other service members on state active duty.

37 SEC. 8. Section 166 of the Military and Veterans Code is  
38 amended to read:

39 166. In the event of the absence of the Adjutant General or of  
40 his or her inability to perform his or her duties, the Deputy Adjutant

1 General or other officer designated by the Adjutant General shall  
2 perform the duties of the Adjutant General. In the event of the  
3 absence or inability of those officers, the Governor may detail a  
4 National Guard officer to perform those duties.

5 SEC. 9. Section 167 of the Military and Veterans Code is  
6 repealed.

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